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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVIDOFF HUTCHER & CITRON LLP, :
Plaintiff, :
- against - :
KARA DiPIETRO and H.M.C., INC., :
Defendants. :
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____ Civ. ____ (____)
COMPLAINT

Davidoff Hutcher & Citron LLP *pro se* (“DHC,” or “Plaintiff”), as and for its complaint against defendants Kara DiPietro (“DiPietro”) and H.M.C., Inc. (“HMC,” and collectively with DiPietro, the “Defendants”) alleges as follows:

Preliminary Statement

1. This action simply seeks payment of an outstanding bill for legal services rendered and disbursements totaling \$173,712.39.

2. From July 2018 through June 2020, DHC provided legal services to Defendants in three separate litigation matters: (i) *H.M.C., Inc. et al. v. Cash Crunch Capital LLC, et al.*, Index No. 516044/2018 (N.Y. Sup. Ct. Kings Co.) (the “GTR Action”); (ii) *H.M.C., Inc., et al. v. CDS Business Servs., Inc., et al.*, Case No. 19-cv-3918 (SJF)(SIL)

(E.D.N.Y.) (the “Newtek Action”); and (iii) defending litigation commenced against Defendants in Pennsylvania State Court instituted by Par Funding (the “Par Funding Action”) (the GTR Litigation, Newtek Litigation and Par Funding Litigation, collectively, the “Actions”), and various other matters as they arose.

3. During the course of DHC’s representation of Defendants, DHC’s total fees and expenses billed to Defendants were \$256,368.18.

4. Defendants paid only \$82,665.79, leaving a balance owed of \$173,712.39.

Parties

5. Plaintiff, Davidoff Hutcher & Citron LLP, is a limited liability partnership duly organized and existing under the laws of the State of New York, with its principal place of business at 605 Third Avenue, 34th Floor, New York, New York 10158.

6. Defendant DiPietro is an individual who resides in the State of Maryland.

7. Defendant HMC is a Maryland corporation with its principal place of business located in the State of Maryland.

Jurisdiction and Venue

8. This Court has personal jurisdiction over Defendants since Defendants retained DHC in to provide legal representation for them in New York State, the services rendered that are the subject of this litigation were performed in New York State.

9. This Court has subject matter jurisdiction over this action because there exists complete diversity of citizenship between Plaintiff and Defendant pursuant to 28 U.S.C. § 1332(a)(1) and the amount in controversy exceeds this Court’s jurisdictional limit.

10. This Court is the appropriate venue for this action since a substantial part of the events or omissions giving rise to the claim occurred in this district pursuant to 28 U.S.C.

§ 1391(b)(2), all of the damages caused by Defendants' actions occurred in New York, and Plaintiff is a resident of this District.

Facts

11. DHC provided various legal services to Defendants, including providing legal services to them with respect to the Actions.

12. The Actions were all hard fought and DHC achieved results for Defendants that exceeded all expectations.

13. Between approximately July 2018 through June 2020, at the request of Defendants, DHC performed legal services for Defendants as their attorneys for a fee based upon DHC's time and, by like request, advanced and laid out various sums of money for Defendants' account and benefit for a total amount due of \$256,368.18.

14. Defendants agreed to pay DHC all of its fees and disbursements totaling \$256,368.18.

15. Throughout the course of the relationship between DHC and Defendants, Defendants would regularly acknowledge the amounts due and owing from to DHC and repeatedly promised payment in full.

16. DHC performed such legal services for the Defendants in a professional and competent manner.

17. Defendants paid a portion of DHC's fees and disbursements, paying \$82,665.79.

18. Defendants failed to pay the balance of \$173,712.39 of the total amount owed, although duly demanded.

19. This dispute is not covered by 22 N.Y.C.R.R. § 137 because the amount in dispute is more than \$50,000.00.

**AS AND FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

20. Plaintiff repeats and realleges each and every foregoing allegation as if set forth in full herein.

21. Plaintiff and Defendants entered into an engagement letter, dated July 18, 2018 (the “Engagement Letter”) setting forth the terms of the agreement between the parties.

22. The Engagement Letter is a valid and enforceable agreement.

23. Between approximately July 2018 through June 2020, DHC performed certain legal services for Defendants, at their request, for which DHC’s fees, based upon its time, totaled \$247,507.44, and, in connection therewith, DHC advanced monies for disbursement, also at Defendants’ request, in the amount of \$8,860.74.

24. Defendants agreed to pay DHC all of its fees and disbursements pursuant to the Engagement Letter.

25. In breach of the Engagement Letter, Defendants have failed to pay \$173,712.39 of the total amount owed to DHC.

26. By reason of the foregoing, DHC is entitled to recover damages against Defendants in the amount of \$173,712.39, together with interest thereon accrued and accruing.

27. Furthermore, paragraph 10 of the Engagement Letter provides that in the event DHC has to commence a legal proceeding in order to recover its legal fees and disbursements,

“the Court shall award the prevailing party in such action reasonable attorneys’ fees and costs.”

28. As such, DHC requests a hearing as to the amount of reasonable attorneys’ fees it should recover from Defendants as the prevailing party in this litigation.

AS AND FOR A SECOND CAUSE OF ACTION
(Account Stated)

29. Plaintiff repeats and realleges each and every foregoing allegation as if set forth in full herein.

30. Plaintiff provided legal services to Defendants, who were billed for those services by Plaintiff.

31. Defendants received Plaintiff’s invoices without objection.

32. As a result of the foregoing, accounts were stated between Plaintiff and Defendants.

33. Defendants have failed to pay the accounts stated in full, leaving an outstanding balance of \$173,712.39.

34. By reason of the foregoing, Plaintiff is entitled to damages in the amount of \$173,712.39, together with interest thereon accrued and accruing.

AS AND FOR A THIRD CAUSE OF ACTION
(Quantum Meruit)

35. Plaintiff repeats and realleges each and every foregoing allegation as if set forth in full herein.

36. Between approximately July 2018 through June 2020, DHC performed legal services for Defendants, at their request, the reasonable value of which is \$247,507.44, and, in

connection therewith, DHC advanced monies for disbursement, also at Defendants' request, in the amount of \$8,860.74.

37. Defendants received the benefit of the legal services and disbursements heretofore mentioned but have failed to pay \$173,712.39 of the total amount noted above.

38. By reason of the foregoing, there is now due and owing from Defendants to DHC the sum of \$173,712.39 for the unpaid value of services and disbursements, together with interest thereon accrued and accruing.

WHEREFORE, Davidoff Hutcher & Citron LLP demands judgment against Defendants Kara DiPietro and H.M.C., Inc., jointly and severally, in the amount of \$173,712.39, together with an award for the costs and disbursements of this action and an award of attorneys' fees pursuant to the Engagement Letter, in addition to any further relief the Court deems just and proper.

Dated: New York, New York
October 20, 2020

DAVIDOFF HUTCHER & CITRON LLP

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